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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR      | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|---------------------------|---------------------|------------------|
| 09/654,571   | 09/01/2000  | Christopher Morgan Rowden | 1874.20001          | 6908             |
| 30827  | 7590        | 02/09/2005                | EXAMINER            |                  |
| MCKENNA LONG & ALDRIDGE LLP<br>1900 K STREET, NW<br>WASHINGTON, DC 20006 |             |                           | VO, CLIFF N         |                  |
|  |             |                           | ART UNIT            | PAPER NUMBER     |
|  |             |                           | 2671                | 8                |
| DATE MAILED: 02/09/2005  |             |                           |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                               |  |
|------------------------------|------------------------|-------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>           |  |
|                              | 09/654,571             | ROWDEN, CHRISTOPHER<br>MORGAN |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>               |  |
|                              | CLIFF N VO             | 2671                          |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,7-11 and 14-17 is/are rejected.
- 7) Claim(s) 4-6,12,13 and 18 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date: _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

### **DETAILED ACTION**

1. The indicated allowability of claims 1-3, 7-11 and 14-17 is withdrawn in view of the newly discovered reference(s) to Brimberg (U.S. Patent No. 4,652,239) and Kamm (U.S. Patent No. 3,785,065). Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9 and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brimberg (U.S. Patent No. 4,652,239).

As per independent claim 9, Brimberg teaches a method for producing a landscape plan for a property comprising a step of defining a set of generic plant categories (col.4, line 63 through col.5, line 3), a step of assigning a corresponding unique symbol for each generic plant category (col.2, lines 41-47; col.4, line 63 through col.5, line 3), and a step of producing the landscape plan by indicating via the symbols locations for plants on the property (col.2, lines 41-47; col.3, lines 43-55; and col.4, lines 33-47).

As per independent claim 17, Brimberg teaches a method for producing a landscape plan for a property comprising a step of defining a set of symbols, each symbol corresponding to a generic landscape element (col.2, lines 32-47), and a step of

producing the landscape plan by indicating via the symbols locations for plans on the property (col.2, lines 41-47; col.3, lines 43-55; and col.4, lines 33-47).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brimberg (U.S. Patent No. 4,652,239).

As per dependent claim 1, Brimberg teaches a method for producing a landscape plan a property comprising a step of defining a set of generic plant categories (col.4, lines 64-66), a step of assigning a corresponding unique symbol for each generic plant category, defining a set of unique symbols (col.2, lines 32-47), a step of receiving from a customer a survey of the property, a list of desired landscape characteristics for the property (col.5, lines 14-30), a list and a step of generating the landscape plan for the property, the landscape plan using the unique symbols to indicate locations on the property where plants should be located (col.2, lines 41-47; col.4, lines 33-47; and col.3, lines 43-55).

It should be noticed that Brimberg fails to teach receiving a photograph of the property. Rather, Brimberg receives a sheet of drafting of the property (col.6, lines 7-11). However, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to modify Brimberg system by using the photograph of the property instead of the drafting in order to make it more efficient since it would have eliminated the process of hand-drawing of the property by simply taking a photograph of it as now claimed.

As per dependent claims 2 and 10, it should be noticed that Brimberg fails to implicitly teach wherein the generic plant categories are defined according to a plant size. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reconfigure Brimberg's teaching by providing the plant sizes for the plant in order to make it more efficient because it would have provided the designer easiness in making the proper location for that plant in the property.

As per dependent claims 3 and 11, it should be noticed that Brimberg fails to implicitly teach wherein the generic plant categories are defined according to a leaf texture. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reconfigure Brimberg's teaching by providing the leaf texture in the plant categories in order to make it more efficient because it would have provided the designer easiness in making the right location of the plant based on the color of the plant and the color of property elements such as walls, floor ...

6. Claims 7-8 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brimberg (U.S. Patent No. 4,652,239) in view of Kamm (U.S. Patent No. 3,785,065).

As per dependent claims 7-8 and 15-16, it should be noticed that Brimberg fails to teach a step of providing a list of specific plants belong to each generic plant category and a legend identifying each symbol. However, Kamm teaches another process for producing a landscape plan for a property including providing a legend for identifying each symbol (col.5, lines 55-63). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Kamm into Brimberg's process since it would have provided to the customer some knowledge such as names about the plants which they want for their property.

***Allowable Subject Matter***

7. Claims 4-6, 12-13 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLIFF N VO whose telephone number is 703-305-9594. The examiner can normally be reached on 2nd Monday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MARK K ZIMMERMAN can be reached on 703-305-9798. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cliff Vo  
2/1/2005

GW



MARK ZIMMERMAN  
SUPERVISORY PATENT EXAMINER  
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